

No. 6529

IN THE  
**United States Circuit Court of Appeals**  
For the Ninth Circuit

CHIN WING,

*Appellant,*

vs.

JOHN D. NAGLE, as Commissioner of  
Immigration for the Port of San  
Francisco, California,

*Appellee.*

**BRIEF FOR APPELLANT.**

STEPHEN M. WHITE,

576 Sacramento Street, San Francisco,

*Attorney for Appellant.*

**FILED**

**NOV 23 1931**

**PAUL P. O'BRIEN,**  
CLERK



## Subject Index

---

	Page
Statement of the case .....	1
Preliminary facts .....	2
The question in the case .....	3
Argument .....	3
The evidence adduced in behalf of the appellant established to a reasonable certainty that he was the son of his alleged father .....	8
The alleged testimonial discrepancies do not afford substantial ground for rejecting the affirmative evidence adduced in behalf of the appellant .....	15
Conclusion .....	32

---

## Table of Authorities Cited

---

	Pages
Chung Pig Tin v. Nagle, 45 Fed. (2d) 484, C. C. A. 9th...	14
Gambroulis v. Nash, 12 Fed. (2d) 49, C. C. A. 8th .....	15
Go Lun v. Nagle, 22 Fed. (2d) 246, C. C. A. 9th. .7,14, 21, 26, 31	
Gung Yow v. Nagle, 34 Fed. (2d) 848, C. C. A. 9th.....	7
Hom Chung v. Nagle, 41 Fed. (2d) 126, C. C. A. 9th.....	
.....7, 22, 23, 31, 32	
Johnson v. Ng Ling Fong, 17 Fed. (2d) 11, C. C. A. 1st..	10
Louie Poy Hok v. Nagle, 48 Fed. (2d) 753, C. C. A. 9th.7, 11, 21	
Nagle v. Dong Ming, 26 Fed. (2d) 438, C. C. A. 9th.....	21
Nagle v. Jin Suey, 41 Fed. (2d) 522, C. C. A. 9th.....7, 20, 21	
Ng Fung Ho v. White, 259 U. S. 276, 42 S. Ct. 494, 66 L. Ed. 938 .....	16
Ng Yuk Ming v. Tillinghast, 28 Fed. (2d) 547, C. C. A. 9th	11
Tang Tun v. Edsell, 223 U. S. 673, 32 S. Ct. 359, 56 L. Ed. 606.....	16
United States v. Ju Toy, 198 U. S. 253, 25 S. Ct. 644, 49 L. Ed. 1040 .....	16
Weedin v. Lee Gan, 47 Fed. (2d) 886, C. C. A. 9th.....	15
Whitfield v. Hanges, 222 F. 745, 138 C. C. A. 199.....	16
Wong Bing Pon v. Carr, 41 Fed. (2d) 604, C. C. A. 9th...	19
Young Len Gee v. Nagle, No. 6496, C. C. A. 9th, decided Nov. 13, 1931 .....	7, 15, 26, 32



No. 6529

IN THE

**United States Circuit Court of Appeals**

**For the Ninth Circuit**

---

CHIN WING,

*Appellant,*

VS.

JOHN D. NAGLE, as Commissioner of  
Immigration for the Port of San  
Francisco, California,

*Appellee.*

**BRIEF FOR APPELLANT.**

---

**STATEMENT OF THE CASE.**

This is an appeal taken from the order of the District Court for the Northern District of California denying a petition for a writ of habeas corpus. (Tr. of R., p. 40.)

The appellant, a male Chinese, claims to have been born in China on November 5, 1911. He arrived at the Port of San Francisco on July 23, 1930, and, thereupon, applied to the immigration authorities for admission to the United States under a citizenship status, claiming that he was the son of Chin Sung, a native citizen of the United States. (Section 1993 of Revised Statutes.) A Board of Special Inquiry, which

was convened at the port, decided that the appellant was not the son of Chin Sung, his alleged father, but conceded that the latter was a native citizen of the United States. Upon appeal to the Secretary of Labor, the decision of the Board of Special Inquiry was affirmed and the appellant was ordered deported. Being held in alleged unlawful custody for the purpose of deportation, proceedings in habeas corpus were instituted.

In the Court below, the original immigration records (Exhibits "A" to "E") were filed as part of the petition and these records have by order of Court been transmitted as part of the record on appeal. (Tr. of R., p. 49.)

---

#### PRELIMINARY FACTS.

The records of the immigration service disclose that Chin Sung, the appellant's alleged father, was born in the United States and that he has made five trips to China, as follows:

First. Departed in 1885 and returned in 1889;

Second. Departed in 1905 and returned in 1906;

Third. Departed January 9, 1911, and returned April 24, 1912;

Fourth. Departed on August 21, 1920, and returned on September 13, 1922;

Fifth. Departed on June 22, 1928, and returned on July 23, 1930, in company with the applicant. (Tr. of R., p. 21.)

The alleged father was twice married. His first wife, Lok Shee, died in November, 1919. He married his second wife, also named Lok Shee, on November 1, 1920. By his first wife, he had three sons, namely, Chin Tong, who came to the United States on April 24, 1912, and who thereafter made one trip to China, departing from the United States on December 22, 1917, and returning thereto on July 16, 1919; Chin Fang, who came to the United States on September 13, 1922, who remained in the United States until February 20, 1926, when he departed for China, and who is attending a university at Canton City; Chin Wing, who is said to be the appellant and who was born at Lan On Village, Sun Ning District, China, on November 5, 1911, incident to the alleged father's third trip to China between January 9, 1911, and April 24, 1912. By his second wife, the alleged father claims to have had one son and one daughter, neither of whom has ever been to the United States. (Findings of Board of Special Inquiry, Tr. of R., pp. 32-33.)

---

### THE QUESTION IN THE CASE.

In denying the existence of the relationship between the appellant and his alleged father, the Secretary of Labor, through his Board of Review, found and decided, as follows:

“55735/639      San Francisco    December 12, 1930.

In re: Chin Wing, age 19.

This case comes before the Board of Review on appeal from a decision of a Board of Special

Inquiry at San Francisco denying admission as the son of a native citizen of the United States. The citizenship of the alleged father being conceded, the question at issue is relationship.

Attorney George W. Hott has filed a brief, Attorneys White and White at the port.

The record shows that the alleged father was in China at a time to make possible his paternity to a child of the applicant's asserted age and that in 1912 he claimed to have a son of the name and birthdate given by and for this applicant. The alleged father who was last in China from 1928 until he left there in company with the applicant, and an alleged brother who was admitted in 1912 and subsequently visited China from 1917 to 1919 appeared to testify. The testimony discloses such disagreements as the following:

The alleged father testifies that when he was in China from 1920 to 1922 his son, whom the applicant claims to be, was attending school in the home village and on recall he repeats and strengthens the statement saying that during the entire period from 1920 to 1922 the applicant was attending school in the home village. The applicant on the other hand testifies that he never attended any other school than one in Sun Ning City and that he did not start school there until 1926 when he was by Chinese reckoning sixteen years old. When he was advised that his testimony disagreed with that of his alleged father he changed his statement saying he did go to the village school for a few days about five years ago, which would be after the alleged father was at home from 1920 to 1922. In explanation of the unusual character of his statement that he did



not start school until he was sixteen, he says that his mother was responsible for his starting to go to school at the age of sixteen. The attorney's attempt to resolve this discrepancy on the theory that the applicant played truant and, while his alleged father thought that he was attending school, was actually not attending school, might be acceptable if it were offered to account for a period of a day or two. It is not in the opinion of the Board of Review reasonable to believe that for a period of more than a year when the alleged father was at home he would not have learned that the applicant was playing truant when he was supposed to be in school especially when they both claim to have been living in the same house in a little village of fifty or sixty houses. Moreover, the applicant's testimony that he did not start to go to school until four or five years ago contradicts not only the testimony of his alleged father but also the testimony given by his alleged brother Chin Tong in 1922 when he appeared on behalf of another alleged brother then applying for admission and answered the question 'What was your brother Chin Wing (this applicant) doing when you were last in China?' by saying, 'Going to school.' As noted above, this alleged brother Chin Tong was last in China from 1917 to 1919 and the context of Chin Tong's statement just quoted shows that he meant that his brother, whom this applicant claims to be, was attending school in the home village. It is not conceivable that both the alleged father and a prior landed alleged brother of the applicant would have believed that he was attending school in the home village when one of them was at home for two years from 1917 to 1919 and the other

from 1920 to 1922 if he was actually not attending school in the home village. Such a discrepancy as this could not reasonably be expected to appear as between the applicant and his witnesses, if his relationship to them were actually as claimed.

The alleged father states that the family burial place is located one or two li south of the home village. The applicant states that his family burial place is located about a li northeast of his home village. If this were merely a disagreement as to directions described by reference to the cardinal points of the compass, it might not be held to be definite and serious, but it is made definite by the fact that the alleged father places the burial place behind the village whereas the applicant places it in front.

In addition to the above noted discrepancies, the Chairman of the Board at the port notes in his summary the statement of the alleged father that he is not able to tell whether there are skylights and lofts in the bedrooms of his house because he did not enter those bedrooms during his last stay in China from 1928 until this year. He gives as the reason for his not entering those rooms that they were occupied by his daughters-in-law. But when he is reminded that one of the said daughters-in-law did not come to his house within some six months after he went home in 1928 and he nevertheless repeats that he did not enter those rooms. It would, as the Chairman comments, be difficult to believe that the alleged father who as he says had no occupation and stayed around home lived for six months in a small house of five rooms and did not enter two of them when so far as the record shows there

was no reason why he should not go into one of the two.

It is the opinion of the Board of Review that a record which contains such features as those noted above fails reasonably to establish the applicant's claim to be the son of his alleged father.

It is, therefore, recommended that the appeal be dismissed.

Havard S. Eby,  
Acting Chairman, Sec'y. & Comr.  
Gen'l's Board of Review.

EJW/ws

So Ordered:

W. W. Smelser,  
Assistant to the Secretary."

(Immigration Record, Exhibit "A," pp. 69-68.)

In behalf of the appellant, it is contended that the evidence submitted on his application for admission so conclusively established the alleged relationship that the order of exclusion was arbitrary and unfair.

*Young Len Gee v. Nagle*, No. 6496, C. C. A.

9th, decided November 13, 1931;

*Go Lun v. Nagle*, 22 Fed. (2d) 246, C. C. A.

9th;

*Hom Chung v. Nagle*, 41 Fed. (2d) 126, C. C.

A. 9th;

*Louie Poy Hok v. Nagle*, 48 Fed. (2d) 753,

C. C. A. 9th;

*Nagle v. Jin Suey*, 41 Fed. (2d) 522, C. C. A.

9th;

*Gung Yow v. Nagle*, 34 Fed. (2d) 848, C. C. A.

9th.

**ARGUMENT.****THE EVIDENCE ADDUCED IN BEHALF OF THE APPELLANT ESTABLISHED TO A REASONABLE CERTAINTY THAT HE WAS THE SON OF HIS ALLEGED FATHER.**

On November 14, 1906, incident to his return to the United States from his second trip to China, Chin Sung, the appellant's alleged father, was questioned by the immigration authorities as to his marital status and he gave the following testimony:

“Q. Are you married?”

A. Yes.”

(Immigration Record, Exhibit “C,” p. 15.)

On April 23, 1912, incident to his return to the United States from his third trip to China, he was again questioned by the immigration authorities as to his marital status, as well as in respect to his children, and, upon that occasion, he testified that he was married in 1898 to Lok Shee and that he had three sons by her, his third son being as follows: Chin Wing, aged 2 years, born ST. 3-9-15, the equivalent American date being November 5, 1911. (Immigration Record, Exhibit “E,” p. 39.) He thereafter consistently claimed a son, who bears the same name and who was born on the same date as the appellant, on the following occasions: In April, 1912, incident to the application for admission to the United States of his oldest son, Chin Tong (Immigration Record, Exhibit “B,” p. 47); in August, 1920, incident to his departure from the United States on his fourth trip to China (Immigration Record, Exhibit “E,” p. 27); in September, 1922, incident to the application for admission to the United States of his second son, Chin Fang (Immi-

gration Record, Exhibit "D," p. 16); in June, 1923, incident to his departure from the United States on his fifth trip to China (Immigration Record, Exhibit "E," p. 10); in July, 1930, incident to his return to the United States. (Immigration Record, Exhibit "E," p. 3.)

The appellant's oldest brother, Chin Tong, arrived in this country on April 24, 1912, and, upon the hearing of his case, he was questioned by the immigration authorities as to his family and he stated that he had a brother named Chin Wing born "the 9th month, 15th day of last year" (1911), the equivalent date in American reckoning being November 5, 1911. (Immigration Record, Exhibit "B," p. 52.) Chin Tong departed on his only trip to China on December 22, 1917, at which time he again testified before the immigration authorities that he had a brother whose name and age correspond with those of the appellant. (Immigration Record, Exhibit "B," p. 20.)

The appellant's second brother, Chin Fang, arrived in the United States on September 13, 1922, and, at that time, he was questioned by the immigration authorities as to his family and he stated that he had a brother named Chin Wing, aged 12 years. (Immigration Record, Exhibit "D," p. 26.) Chin Fang departed for China on February 20, 1926, at which time he again testified before the immigration authorities that he had a brother of the name and age of the appellant. (Immigration Record, Exhibit "D," p. 11.)

The Board of Special Inquiry said:

"The alleged father has made five trips to China. He departed on his third trip to China



on January 9, 1911, and returned April 24, 1912. This trip establishes the presence of the alleged father in China at a time to make possible for him to render paternity to a child of the birth date claimed for this applicant. When the alleged father returned from this trip to China he claimed to have been married to Lok Shee in K. S. 24 (1898), and to have had three sons. He gave the data concerning the third son as follows: Chin Wing, 2, born S. T. 3-9-15 (Nov. 5, 1911). The alleged father has consistently claimed a son of similar name and birth date ever since that time. He departed on his fourth trip to China on August 21, 1920, and returned September 13, 1922. He departed on his last trip to China June 22, 1928, and returned in company with the applicant on July 23, 1930." (Tr. of R., pp. 32-33.)

It will, therefore, be seen that a son of the description of the appellant has been consistently mentioned by the alleged father over a period of many years, commencing in 1912, at which time the appellant was only about 5 months old, and that the alleged father's two prior landed sons, Chin Tong and Chin Fang, have also consistently mentioned a brother of the description of the appellant.

In *Johnson v. Ng Ling Fong*, C. C. A. 1st., 17 Fed. (2d) 11, the Court said:

"The records in the Immigration Department concerning the alleged father and his family since 1909 are so complete, and the statements as to the number of births of his children have been so consistent, through this long period of time, that it is inconceivable that fair-minded men, free from bias and suspicion, should entertain any

reasonable doubt as to the relationship of the applicant and his alleged father, \* \* \*.”

In *Louie Poy Hok v. Nagle*, 48 Fed. (2d) 753, at page 755, this Court said:

“A similar case arose in *Ng Yuk Ming v. Tillinghast*, 28 Fed. (2d) 547, 548 (C. C. A. 1st). There, ‘13 years before \* \* \* the alleged father \* \* \* testified before the immigration authorities that he had a son bearing the name of the applicant, \* \* \* which he confirmed on every other occasion upon which he was called to testify.’ The decision of the Court was that the decision of the immigration officials was not supported by the evidence and the prisoner was ordered released from custody. See, also, *Gung Yow v. Nagle*, 34 Fed. (2d) 848 (C. C. A. 9th). In the instant case the cumulative effect of the repeated assertions by the father and the previously entered alleged brothers that there was a third son, *Louie Fung Leung*, born October 1, 1909, certainly go farther than a mere indication that the three were suffering from a delusion; the effect of the testimony in the mind of any reasonable man must be to create the belief that there was a third son somewhere in the offing.”

The witnesses for the appellant were his alleged father, *Chin Sung*, and his oldest prior landed brother, *Chin Tong*. The appellant’s second prior landed brother, *Chin Fang*, did not appear as a witness for the reason that he departed in February, 1926, for China, where he has ever since been. (Findings of Board of Special Inquiry, Tr. of R., p. 33.) The appellant and his alleged father testified at San Fran-

cisco and their testimony covers approximately twenty-two pages, single space and small type. (Immigration Record, Exhibit "A," pp. 12-33.) The prior landed brother, Chin Tong, testified at Denver, Colorado, where he resides, and his testimony covers approximately ten pages, single space and small type. (Immigration Record, Exhibit "A," pp. 36-45.) The appellant and his witnesses were interrogated in respect to a myriad of subjects, among which were the names, ages, whereabouts of the appellant's brothers and sister, the name, age, kind of feet of the appellant's mother, when she died, where she died, the village from which she originated, the name, age, kind of feet of the appellant's step-mother, the village from which she originated, the date of marriage of the appellant's oldest brothers, the names, ages, kind of feet of the brothers' wives, the villages from which the wives originate, the names, ages, whereabouts of the children of the brothers, the names, ages of the appellant's paternal grandparents, when they died and where they are buried, the description of their graves, the distance of the graves of the paternal grandparents from that of the appellant's mother, whether or not the appellant has any paternal aunts or uncles, the names, ages and whereabouts of the appellant's maternal uncles and aunt, whether or not they are married, the names, ages and whereabouts of their children, the number of houses in the appellant's village, the number of rows in which the houses are arranged, the number, names and locations of the ancestral halls in the village, the location of the watch tower, the names of the occupants of the houses in the



village, the families of the occupants, the location of the village fish pond, the names of nearby villages and markets, the description of the family home, the domestic animals kept by the family, the route of travel from the village to Hongkong. The testimony of the witnesses is narrated in detail in the petition for a writ. (Tr. of R., pp. 4-11.)

The Board of Special Inquiry did not comment upon the manner in which the appellant and the alleged father gave their testimony, but the District Director of Immigration at Denver, Colorado, who took the testimony of the appellant's prior landed brother, Chin Tong, commented upon the manner in which this brother gave his testimony, as follows:

“U. S. Commissioner of Immigration,  
San Francisco, Calif.

Reference being had to your file No. 29394/3-23, and your letter of the 11th. instant, with which you transmitted files in the case of the application of Chin Wing, for admission as the son of Chin Sung, a native, with the request that statements be taken from the alleged brother of Chin Wing, namely, Chin Tong, at Denver, Colo., be advised that such statement was taken and three copies of same are transmitted herewith, together with the files transmitted with the case, Nos. 29394/2-26, 12017/29106, 16338/6-9 and Seattle files R. S. 15551 and R. S. 1280.

The witness making the inclosed statement speaks English, seems to know considerable about the applicant, or else has been coached very thoroughly as to affairs in China in the Lan On Village, and was not at all embarrassed by the ques-

tions, nor did he seem at all non-plussed by any of the questions asked.

W. R. Manifold,  
District Director of Immigration,  
Denver, Colorado.”  
(Immigration Record, Exhibit “A,” p. 46.)

In *Chung Pig Tin v. Nagle*, 45 Fed. (2d) 484, this Court said:

“Before taking up these discrepancies, real or apparent, it may be well to consider the scope of the examination out of which they arose. The testimony of the alleged father, taken at Los Angeles, covers upwards of twenty single spaced typewritten pages, and the testimony of the appellant, taken at San Francisco, covers approximately seven pages. The witnesses were interrogated as to their home life and relatives, near and remote; as to the home village; the number of houses in the village; the names of the occupants and the names of their children; the name of the school teacher and the names of his wife and children; the number of children attending school and their names; the ancestral hall and a multitude of other collateral questions. *In all of this testimony there was such general agreement, and the scope of the examination was so broad as to preclude any reasonable probability of coaching or collusion.*”

In *Go Lun v. Nagle*, 22 Fed. (2d) 246, at page 248, this Court said:

“A reading of the entire testimony of the three witnesses leaves not the slightest room for doubt that their relationship was fully established, and

that the appellant is a citizen of the United States. A contrary conclusion is arbitrary and capricious and without any support in the testimony.”

*Weedin v. Lee Gan*, 47 Fed. (2d) 886, C. C. A. 9th;

*Young Len Gee v. Nagle*, supra.

---

**THE ALLEGED TESTIMONIAL DISCREPANCIES DO NOT AFFORD SUBSTANTIAL GROUND FOR REJECTING THE AFFIRMATIVE EVIDENCE ADDUCED IN BEHALF OF THE APPELLANT.**

A review of the decision of the Secretary of Labor, supra, shows that the relationship of the appellant to his alleged father has been denied on account of three so-called testimonial discrepancies, which relate to the following matters:

1. Whether or not the appellant was attending school between 1920 and 1922.
2. The direction of the burial ground from the home village.
3. Skylights in the family home.

A discussion of these several items is proper in order to determine whether or not the same afford substantial ground to overcome the burden of proof established by the affirmative evidence adduced in behalf of the appellant.

*Young Len Gee v. Nagle*, supra.

In *Gambroulis v. Nash*, 12 Fed. (2d) 49, C. C. A. 8th, the Court at page 52, said:

“The courts will not review the findings of the Department of Labor on the fact question in-

volved, if there is substantial evidence to support it; fraud and mistake being absent. *Ng Fung Ho v. White*, 259 U. S. 276, 42 S. Ct. 494, 66 L. Ed. 938; *Tang Tun v. Edsell*, 223 U. S. 673, 32 S. Ct. 359, 56 L. Ed. 606; *United States v. Ju Toy*, 198 U. S. 253, 25 S. Ct. 644, 49 L. Ed. 1040; *Whitfield v. Hanges*, 222 F. 745, 138 C. C. A. 199. Whether there is any substantial evidence presented at the hearing to support the charge is a question of law, reviewable by the court. *Whitfield v. Hanges*, 222 F. 745, 138 C. C. A. 199.”

**1. Whether or Not the Appellant Was Attending School Between 1920 and 1922.**

It is conceded that the appellant and his alleged father agreed that for the past few years or since 1926 the appellant has been attending school at Sun Ning City, which is located about three pos (about 30 miles) from the home village of Lan On. (Tr. of R., pp. 21-27.) However, when asked as to the place where the appellant attended school during his visit to China between 1920 and 1922, the alleged father stated that the appellant was attending school in the home village (Tr. of R., p. 24), whereas the appellant stated that he had never attended school in the home village, except for a few days about five years ago; the appellant did not deny that he was in the home village between 1920 and 1922 and his testimony indicates that he was there during that period. (Tr. of R., pp. 25-27.)

There are many circumstances to be considered in respect to the testimony bearing upon this item. The appellant was of school age, being past 12 years old,

when the alleged father was in China between 1920 and 1922 and, naturally, the alleged father, even without having any definite recollection of the matter, would assume that the appellant was attending school during that period. Moreover, the alleged father has been in China only at infrequent intervals, he is the father of five children, three of whom are by his first wife and two of whom are by his second wife, his oldest son, Chin Tong, attended school in the home village prior to coming to the United States in 1912, his second son, Chin Fang, attended school in the home village prior to coming to the United States in 1922 (Tr. of R., p. 23), this second son has been attending school at Canton City since his return to China in 1926 (Tr. of R., p. 33), his third son, whom the appellant claims to be, has been attending school at Sun Ning City since 1926 until his departure for the United States, his fourth son, Chin Gay, is attending school in the home village and his daughter, Chin Yee, has not commenced to attend. Thus, it may be seen that the experiences of the four children, who have attended school, have been varied, two of the children, Chin Tong and Chin Gay, having attended school in the home village, another of the children, Chin Fang, having attended school at the home village and at Canton City, and another, the appellant, having attended at Sun Ning City. Take the usual father, who has five children, from whom he has been separated during most of his life, we believe that it may be fairly stated that he would not have very definite knowledge of the exact school experience of each child, especially if the school experiences of the chil-



dren were varied. We, therefore, submit that it is hardly fair or reasonable to expect the alleged father in this case to have a very definite or clear recollection as to whether or not the appellant was actually attending school in the home village some nine or ten years ago or between 1920 and 1922, it being borne in mind that there is no disagreement as to the appellant's attendance at school at Sun Ning City for the past few years.

Furthermore, it will be noted that the appellant's testimony to the effect that he was not attending school in the home village between 1920 and 1922 was not called to the attention of the alleged father. (Tr. of R., pp. 21-24.) In view of this circumstance, the discrepancy lacks substance, especially inasmuch as the alleged father's testimony showed that his memory was not entirely clear as to the schooling of not only the appellant, but also of the appellant's prior landed brother, Chin Fang. He gave the following testimony:

“Q. Do you know what year he (appellant) first started to attend that school in Sun Ning City?”

A. I do not remember.

\* \* \* \* \*

Q. At what age did this applicant first start school?

A. He started at either 7 or 8 years of age. I was in this country when he started to go to school.

\* \* \* \* \*

Q. Did this applicant ever attend school with your son Chin Fang?

A. I do not think so.

\* \* \* \* \*

Q. You brought Chin Fang to this country the first time, did you not?

A. Yes.

Q. Was he then attending school at the Ngee Din Ancestral Hall?

A. Yes.

Q. Was this applicant Chin Wing then attending school?

A. Yes, at the same school, Oon Mook. I have forgotten whether my second son ever attended school with the applicant or not, because my second son Chin Fang also attended school in Gong Moon City before he first came to the U. S.

\* \* \* \* \*

Q. You brought him to this country in CR.-11 (1922). Was that the year you have in mind?

A. He did not go to school in CR.-11 (1922). It was in CR.-10 (1921).

\* \* \* \* \*

Q. How do you know this applicant first started to school when he was 7 or 8 years of age?

A. I do not know for certain. I merely guessed at that." (Tr. of R., pp. 22-23.)

In *Wong Bing Pon v. Carr*, 41 Fed. (2d) 604, at page 605, this Court said:

"\* \* \*. The Board of review dismissed from consideration various minor discrepancies, and finally relied upon two (apart from the question of applicant's age) as supporting the finding that the claimed relationship was not established. The first concerned appellant's statement that he last saw his father 2 years ago, when as a matter of fact the father had returned to the United States from China but 6 months prior to appellant's arrival. It is suggested in argument that further

questioning on this subject would have developed the absence of discrepancy as to this point, because of the differences between the Chinese and the American methods of reckoning time. However this may be, appellant was given no opportunity to explain his answer, in the face of the fact that his entire examination showed him to be extremely vague in his ability to fix dates. *In view of this failure to pursue the subject, it must be held that this discrepancy is without substance.*”

The decision of this Court in *Nagle v. Jin Suey*, 41 Fed. (2d) 522, is especially applicable. There, the facts disclosed several discrepancies in testimony, the most serious of which related to the place where the applicant had attended school in 1920 or about eight years previous to the time that he applied for admission; the alleged father had testified in 1921, in the case of another alleged son, who had then just arrived from China, that the applicant, Jin Suey, had been attending school in Canton City for two or three years and the alleged son, who had arrived from China in 1921, agreed with the alleged father as to Jin Suey's attendance at school at Canton City. When Jin Suey arrived in the United States in 1929 and applied for admission, he (Jin Suey) stated that he had never been to Canton City and that he had always attended school in the home village. The Court, through his honor the late Judge Dietrich, said:

“Upon the question whether or not applicant had ever attended school in Canton, the testimony given by the three witnesses is out of accord with that given in 1921 by the alleged father and an-



other alleged son, but it is to be borne in mind that upon that subject the father at least never testified from his own knowledge; he was in this country and could only state what he had heard or, as was seemingly the case here, what he assumed to have been done as the result of certain instructions he had given. There is also a seeming discrepancy of a minor character in respect of the schooling of another brother. *But, assuming the discrepancies touching the schools to be real, they sink into insignificance when compared with the many subjects upon which there is agreement, and some discrepancies are to be expected in the testimony of the most truthful witness.* Go Lun v. Nagle (C. C. A.), 22 Fed. (2d) 246; Nagle v. Dong Ming (C. C. A.), 26 Fed. (2d) 438.”

It is true that the alleged father, in *Nagle v. Jin Suey*, supra, was testifying from hearsay, but, however, it must be admitted that the prior landed brother, who also agreed with the alleged father and disagreed with the applicant, was testifying from personal knowledge, as this brother, in 1921, had just arrived from China. In any event, the important language in the decision is the following:

“But, assuming the discrepancies touching the schools to be real, they sink into insignificance when compared with the many subjects upon which there is agreement, and some discrepancies are to be expected in the testimony of the most truthful witnesses.”

In *Louis Poy Hok v. Nagle*, 48 Fed. (2d) 753, at page 756, this Court said:

“The exact details as to the date on which applicant went to a neighboring village to enter a

higher school are of minor importance and failure to agree does not discredit the testimony of the father or of the alleged son. *Upon such particulars discrepancies are bound to occur.*"

**2. The Direction of the Burial Ground From the Appellant's Village.**

It will not be denied that the appellant and his alleged father agreed that the appellant's mother, who was the first wife of the alleged father, is buried in a hill called Hai Ngai, that the appellant's paternal grandparents are also buried in that hill, that the paternal grandparents are buried in one grave and that there is a stone marking the grave, that the paternal grandparents' grave is 70 or 80 feet from the appellant's mother's grave, that the applicant, with his alleged father, visited the graves during the Ching Ming Festival in 1929 and 1930. (Immigration Record, Exhibit "A," pp. 15, 16, 17, 24, 25, 26, 32, 33.) However it is said that the alleged father testified that the hill called Hai Ngai is located at the south or back of the village whereas the appellant stated that this hill is located at the east or front of the village. This matter is trivial. The hill may have completely surrounded the village or, at least, it may have extended to three sides, namely, the south, east and north, thus, forming a semicircle. No testimony was developed in respect to the description of the hill or as to its extent. (Tr. of R., pp. 27-29.)

In *Hom Chung v. Nagle*, 41 Fed. (2d) 126, at page 128, this Court said:

"\* \* \*. The father and the appellant agree as to so many details that the discrepancies must be

the result of some error or misapprehension in the examination of the witnesses. As to the grandparents' graves, such discrepancies as exist would hardly constitute a fair basis for excluding the appellant. \* \* \*."

It is established by the records of the immigration service that the alleged father was in China at intervals from 1885 to 1889, from 1905 to 1906, from 1910 to 1912, from August, 1920, to September, 1922, and from June, 1928, to July, 1930. (Tr. of R., p. 21.) Concerning such a fact, this Court, in *Hom Chung v. Nagle*, supra, also said:

"\* \* \*. The immigration records show that the father departed from the United States for China on October 24, 1914, and again on June 14, 1923, and returned to the United States from China on December 24, 1915, and on May 19, 1925. As he remained in China during these periods of absence, aggregating about three years, it may be assumed that he testified truthfully to the name of the village in which he lived during his absence, and that he is reasonably familiar with such village which he testifies contains only twelve houses. \* \* \*."

The appellant has testified with such a wealth of detail in respect to the burial places of his mother and grandparents and as to his visit to the burial ground that there cannot be any doubt reasonably entertained as to his knowledge of and familiarity with the facts related by him. He testified as follows:

"Q. Where is your own mother buried?

A. In Hai Ngai Hill, a little over one li ( $\frac{1}{3}$  of mile) east of my village.

Q. Is it directly east of your village?

A. No, it is northeast.

Q. Which way does your village face?

A. North.

Q. Then Hai Ngai Hill is beyond the front of your village. Is that right?

A. Yes.

\* \* \* \* \*

Q. Are your paternal grandparents living?

A. No, both are dead.

Q. What are their names and when did they die?

A. My grandfather was Chin Tom Yet, he died before I was born. I don't know where he died. My grandmother was Louie Shee, died in C. R. 17-5-15 (July 2, 1928) at Lan On Village.

Q. Where was your father at the time your paternal grandmother died?

A. In the United States. My father arrived home from the United States 17 or 18 days after my grandmother's death.

Q. How old was your grandmother at the time of her death?

A. About 70 years old.

Q. What kind of feet did she have?

A. Bound feet.

Q. Where is your paternal grandmother buried at the present time?

A. At Hai Ngai Hill.

Q. Is she buried in the same grave with your paternal grandfather?

A. Yes, under the same mound.

Q. Are your paternal grandparents buried close to your mother in the same hill?

A. No, six or seven jungs apart. (60 or 70 feet.)

Q. Are the graves of your paternal grandparents marked in any manner?

A. Yes, there is a piece of stone about nine inches high and eight inches wide on which is inscribed the name of my paternal grandfather.

Q. Is the name of your paternal grandmother also inscribed on that stone?

A. No.

Q. Is the grave of your mother marked in any manner?

A. No.

Q. How can you find it then?

A. I know the location of the grave.

Q. Have you visited those graves every year during Ching Ming Festival?

A. Yes.

Q. While your father was in China on his last trip did he make any visits to those graves during Ching Ming Festival each year?

A. Yes.

Q. Have you ever accompanied him to those graves while he was in China on his last trip?

A. Yes; once during the third month of last year (April, 1929) and once during the third month of this year (April, 1930).

Q. On the occasion in the third month of this year, did you also visit your mother's grave?

A. Yes.

Q. Name all the persons who accompanied your father on that visit which he made to the graves this year?

A. There were only two of us, my father and myself.

Q. Which of these graves did you visit first on that occasion?

A. That of my paternal grandparents.



Q. What time of day did you make the visit?

A. We started from the village about 9 or 10 o'clock in the morning.

Q. On this occasion did your father clean the graves of the paternal grandparents?

A. Yes, we brought along a tool shaped something like a hoe, to loosen dirt.

Q. Did that tool belong to you?

A. Yes."

(Immigration Record, Exhibit "A," pp. 24, 25 and 26.)

The testimony of the alleged father is in agreement with that of the appellant as to all these details. (See testimony of alleged father, Immigration Record, Exhibit "A," pp. 15, 16 and 17.)

In *Young Len Gee v. Nagle*, supra, there was a discrepancy, *inter alia*, involving the location of the burial ground and the graves of the applicant's grandparents and it was held that all of the discrepancies, either separately or collectively, were insufficient to warrant the excluding decision of the immigration authorities.

In *Go Lun v. Nagle*, 22 Fed. (2d) 246, C. C. A. 9th, there was a discrepancy, *inter alia*, involving the location of land owned by the alleged father in the vicinity of the home village and it was held that such a discrepancy was insufficient to warrant the denial of the existence of the claimed relationship.

### 3. Skylights in the Family Home.

There is no discrepancy urged as to this item. The appellant testified that there is a double skylight in

each bedroom and a single skylight in each kitchen (Tr. of R., p. 30); the alleged father agreed that there is a single skylight in each kitchen, but stated that he did not know how many skylights there were in the bedrooms, giving as a reason: "I did not enter them (bedrooms) while I was in China during my last trip. They are occupied by my daughters-in-law and I am not supposed to enter them." (Tr. of R., p. 31.) The alleged father, therefore, did not deny that there were skylights in the bedrooms and, hence, his testimony cannot be said to be at variance with that of the appellant, who stated that there was a skylight in each bedroom. However, the accuracy of the alleged father's testimony to the effect that he did not enter the bedrooms, which were occupied by his daughters-in-law, is questioned, because, as said by the Secretary of Labor, it appears that one of the bedrooms was not occupied by a daughter-in-law for a period of about six months during the alleged father's last visit to China between 1928 and 1930. Firstly, we submit that the fact that the bedrooms were occupied by his daughters-in-law afforded a legitimate reason for the alleged father not to enter those rooms. Secondly, we submit that even though one of the bedrooms was not occupied by one of the daughters-in-law for a period of about six months, nevertheless, the alleged father may not have had any occasion to enter that room during that period; the room may not have been in use at all.

In any event, there is not a particle of evidence to dispute the alleged father's statement to the effect that he did not enter the bedrooms in question. If we re-

view the alleged father's testimony as to the description of his house, as to the sleeping arrangements over a period of years and as to all other details in respect to the house, it must be conceded that he is testifying from facts, rather than from a prepared story. He testified as follows:

“Q. Describe that house in Lan On Village?

A. The old house was torn down and rebuilt in C. R. 12 (1923) after I came to this country in C. R. 11 (1922). It is a regular five-room one-story brick building with tile floors, with two outside entrances, the large door facing east, a window in each of the bedrooms facing the alleys, provided with wooden shutters and iron bars, no glass panes; a single skylight in each of the kitchens covered with a piece of board. I do not know how many skylights there are in the bedrooms because I did not enter them while I was in China during my last trip. They are occupied by my daughters-in-law and I am not supposed to enter them.

Q. One of those bedrooms was empty for a time before Chin Wing got married.

A. I did not enter that room at all.

Q. How were you able to describe the windows in them?

A. I could see them from the alley.

Q. Are there any lofts in your house?

A. There is a shrine loft in the parlor. I presume there are lofts in the bedrooms, but I do not know how they are arranged.

Q. Is there a bedroom partitioned off in the parlor of your house?

A. There is a wooden partitioned room extending across the back of the parlor.



Q. How did you happen to rebuild your house in 1923?

A. It was too old to live in.

Q. Was it entirely wrecked and taken away?

A. It was all torn down. I presume some of the old material was used.

Q. What kind of floors did the old house have?

A. Dirt floors.

Q. How is your house supplied with water?

A. From a well in front of the fourth row from the tail. That is the only well in the village.

Q. What tablets or other objects were kept in the shrine loft of your new house?

A. There is a wooden tablet with the characters Ging Guey Doy carved on it, which stands for all objects that are ordinarily worshipped, and an incense pot.

Q. What furniture have you in the parlor of your house?

A. One square table, several chairs, that is all.

Q. Have you any photographs of any kind hanging on the walls?

A. No.

Q. Is there a clock of any kind in your parlor?

A. No.

Q. Have you any domestic animals in your home?

A. Yes, we have a black dog; no other animals.

Q. How long have you had that particular black dog?

A. For several years. It was there when I arrived home in China on my last trip.

\* \* \* \* \*

Q. After your arrival in China on your last trip, which room in your house did you occupy?

A. The parlor of my house.

Q. Who occupied that parlor with you?

A. My wife, my son, Chin Gay, and my daughter.

Q. Which room did the family of your son, Chin Tong, live in?

A. They lived in the large door bedroom, or east side bedroom.

Q. Who occupied the small-door bedroom?

A. Chin Wing and his wife.

Q. When you arrived at home, Chin Wing had not yet married, had he?

A. No.

Q. Was that room vacant when you first came home?

A. Yes. When my second son, Chin Fang, was in the village he lived in that room with his family. I understand that this room was vacant from the time his family moved away at the end of C. R. 15 (1926).

\* \* \* \* \*

Q. When Chin Fang and his family made these visits to your house while you were last in China, how long did he stay?

A. For a little over a month each time, that is, at New Year's time. On the first visit, he only stayed several days.

Q. Where did he and his family live when he was at your house on these New Year's visits?

A. In the watch-tower.

Q. How long have you had that watch-tower?

A. It was built in C. R. 15 (1926), started in the first or second month of that year. I do not know how long it took to complete it."

The alleged father having testified in such detail in respect to the family home, we submit that it is obvi-

ous that he is testifying from facts and that it is not reasonable to conclude that his lack of knowledge concerning the skylights in two of the bedrooms of the house is due to the fact that the subject was overlooked in coaching.

In *Hom Chung v. Nagle*, supra, this Court said:

“\* \* \* The father states that the schoolhouse has one room, but it is not clear that he states only one, in which the teacher sleeps beyond a screen, while the applicant states that the school has five rooms separated by permanent brick walls, and that the teacher slept in a bedroom on the west side. The father states that the roof of the schoolhouse is a flat tile roof; the applicant states the roof is flat above the kitchen, but pointed above the other rooms. Is it reasonable to conclude that the applicant, as the result of coaching, could agree so fully with his alleged father on such a multitude of details concerning the home and family and village, and fail to agree on the number of rooms in the only schoolhouse in the village merely because the subject was overlooked in coaching the witness? It is not clear why one teacher would need five rooms in which to teach, nor why twenty pupils would require so many rooms. The father and the appellant agree as to so many details that the discrepancies must be the result of some error or misapprehension in the examination of the witnesses. \* \* \*.”

In *Go Lun v. Nagle*, supra, there was a discrepancy between the applicant and his brother as to the skylights in the schoolhouse, where they had attended school together. The Court said:

“The third discrepancy related to windows and skylights in the school-building, and was even less important than the two already considered. The same may be said of other discrepancies pointed out and referred to by the Board of Special Inquiry.”

*Young Len Gee v. Nagle, supra;*

*Hom Chung v. Nagle, supra.*

---

### CONCLUSION.

We submit that there was no substantial evidence to justify the immigration authorities in denying the existence of the relationship between the appellant and his alleged father. There are, in fact, only two alleged discrepancies, which are urged by the immigration authorities. These relate to (1) whether or not the appellant was attending school between 1920 and 1922 and (2) the direction from the village of the burial ground. These matters are, of course, immaterial to the issue of relationship, but, nevertheless, as we have endeavored to point out, the discrepancies in respect to the same are not due to deliberate falsehood, but rather to honest mistake. The matter of the alleged father's lack of knowledge as to the existence of skylights in two bedrooms of the family home is immaterial and unimportant and, as we have endeavored to point out, it must be conceded, as a result of a review of the entire testimony of the alleged father in respect to the family home, that he is familiar with the home and that he is testifying as to facts.

On the other hand, the testimony of the witnesses is in substantial agreement as to practically every matter, both material and immaterial, and the case has no inherent weakness—the alleged father was in China at a time to render possible his paternity to the appellant, having been in China from January, 1911, until April, 1912, and the appellant having been born on November 5, 1911; the alleged father has made consistent mention of the appellant on the occasion of his every appearance before the immigration authorities commencing on April 24, 1912, incident to his return to the United States from his trip to China as a result of which trip the appellant was born; the alleged father's prior landed sons, Chin Tong and Chin Fang, have consistently mentioned the appellant as their brother; the appellant produced all available witnesses to testify in his behalf.

It is respectfully asked that the order of the Court below be reversed with direction to issue a writ of habeas corpus.

Dated, San Francisco,  
November 18, 1931.

Respectfully submitted,  
STEPHEN M. WHITE,  
*Attorney for Appellant.*

